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CITATIONS

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In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 645

UNITED STATES, PETITIONER

v.

THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW JERSEY

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the Superior Court, Chancery Division, Bergen County (R. 5–9), is not reported. The opinion of the Supreme Court of New Jersey (R. 13–19) is reported at 45 N.J. 206, 212 A.2d 25.

JURISDICTION

The judgment of the Supreme Court of New Jersey was entered on July 6, 1965 (R. 20). The petition for a writ of certiorari was filed on October 4, 1965, and was granted on January 17, 1966 (R. 22). The jurisdiction of this Court rests on 28 U.S.C. 1257(3).

QUESTION PRESENTED

A state law provides that, in mortgage foreclosure actions, an allowance for an attorney's fee, fixed as a percentage of the amount adjudged to be paid the mortgagee, shall be a part of the taxed costs of the action. The question presented is whether a federal tax lien is entitled to priority over the mortgagee's claim for such attorney's fee, where notice of the federal tax lien was recorded prior to default by the mortgagor.

STATUTES AND RULE INVOLVED

Sections 6321, 6322, and 6323 of the Internal Revenue Code of 1954 and Rule 4:55–7 of the Rules Governing the New Jersey Courts are set forth in the Appendix, *infra*, pp. 17–19.

STATEMENT

This case began as a mortgage foreclosure action brought by respondent, the first mortgagee. The mortgage, covering real property owned by Albert Bagin and his wife, had been executed on December 13, 1960, and recorded a few days later (R. 5). It secured the Bagins' indebtedness of $30,000 to the respondent (R. 13–14). On March 21, 1962, a federal tax lien for $7,748.91 was filed against Mr. Bagin (R. 5, 14). A year later he and his wife defaulted on the mortgage, and foreclosure proceedings were commenced in the Superior Court of Bergen County, Chancery Division (R. 2–3).

In the Chancery Division the United States admitted that its lien was subordinate to the principal

and interest on the two mortgages involved,[1] but claimed that its tax lien was superior to any claim for attorney's fees (R. 4, 6). The Chancery Court agreed and, in its decree of foreclosure, granted the federal tax lien priority over respondent's attorney's fees, which the court fixed under the State rules at $425.52 (R. 8–11). Respondent appealed to the Superior Court of New Jersey, Appellate Division (R. 13). While the case was pending there, the appeal was certified to the New Jersey Supreme Court on the court's own motion (R. 14). That court directed that the property be sold forthwith, and after the sale ruled that the mortgagee's attorney's fee was payable ahead of the federal tax lien out of the proceeds of sale (R. 14–20).[2]

SUMMARY OF ARGUMENT

Under Sections 6321–6323 of the Internal Revenue Code, the United States receives a lien for unpaid taxes upon the property of the taxpayer which arises upon assessment. A judicial determination of the priority of the federal tax lien in relation to competing State-created liens must conform to the standards of federal law. Under the decisions of this Court, a recorded federal tax lien is subordinate to all prior, perfected liens and superior to all subse-

[1] A second mortgage had been recorded on December 19, 1960, and a third on May 18, 1961 (R. 5). A default judgment was entered against the third mortgagee (R. 5, 11).

[2] Under the Chancery Division's holding the United States was entitled to $491.69 of the proceeds of sale. The holding of the Supreme Court of New Jersey effects a reduction of the share of the United States to $66.17 (R. 15).

quent and inchoate liens. *In United States* v. *Pioneer American Ins. Co.*, 374 U.S. 84, those standards were applied with respect to a mortgagee's claim in a foreclosure suit for an award of attorney's fees based upon the mortgagor's undertaking, in the note and mortgage, to pay a reasonable attorney's fees in the event of foreclosure. The Court held that a federal tax lien arising and recorded after the commencement of the foreclosure suit was senior to the mortgagee's claim for attorney's fees which remained inchoate until reduced to judgment. In the present case, respondent's claim for attorney's fees is based upon Rule 4:55–7(c) of the Rules Governing the New Jersey Courts which provides an allowance for attorney's fees in foreclosure proceedings determined as a percentage of "all sums adjudged to be paid the plaintiff in such action". At the time that the federal tax lien was recorded—more than a year before default or foreclosure—respondent's potential claim was entirely contingent and indeterminate. Accordingly, the court below erred in subordinating the federal tax lien to respondent's claim for attorney's fees.

The court below held that, notwithstanding the decision in *Pioneer*, a State may subordinate a federal tax lien to a junior claim for attorney's fees by awarding the latter as part of the taxable costs of the foreclosure. It is well settled, however, that a State's characterization of State-created liens, while good for all State purposes, is not controlling in determining the standing of a federal tax lien. As this Court said in *United States* v. *Buffalo Savings Bank*, 371 U.S.

228, 229, "the state may not avoid the priority rules of the federal tax lien by the formalistic device of characterizing subsequently accruing local liens as expenses of sale." The characterization of attorney's fees as costs is a no less "formalistic device" to which the collection of federal revenues may not be subjected. While the United States has not challenged the award of costs generally, it has acted in light of the general rule in this country that attorney's fees are not taxable as costs. Its acquiescence, moreover, has been prompted by the fact that taxable costs in the usual case are *de minimis*, fixed in amount, and generally constitute reimbursement for sums paid over to State officials. The United States has not acquiesced in the subordination of federal tax liens to potentially substantial allowances for the counsel fees of adverse parties.

ARGUMENT

I. AS A MATTER OF FEDERAL LAW, RESPONDENT'S CLAIM FOR ATTORNEY'S FEES WAS INCHOATE WHEN THE FEDERAL LIEN AROSE AND IS THEREFORE SUBORDINATE TO SUCH LIEN

A. *The Relative Standing of a Federal Tax Lien is determined by Federal Law*

The Internal Revenue Code gives the United States a lien for unpaid taxes upon "all property and rights to property, whether real or personal" of the taxpayer; the lien arises when the assessment is made; but it is not valid against mortgagees, pledgees, purchasers or judgment creditors until it has been recorded (Sections 6321, 6322 and 6323 of

the Internal Revenue Code of 1954, Appendix, *infra*, pp. 17–19.)

The Court has long recognized that the uniform application of the federal laws and the protection of federal revenues require that State determinations of the relative priority of federal tax liens must meet federal standards.[3] "Otherwise, a State could affect the standing of federal liens * * * simply by causing an inchoate lien to attach at some arbitrary time * * *." *United States* v. *New Britain*, 347 U.S. 81, 86. It is therefore well established that, whatever may be the priorities among State-created liens, a recorded federal tax lien is subordinate to all prior, perfected liens and superior to all subsequent and inchoate liens.[4] Subsequently perfected liens do

[3] *United States* v. *Security Trust & Sav. Bank*, 340 U.S. 47, 49; *United States* v. *Gilbert Associates*, 345 U.S. 361; *United States* v. *Acri*, 348 U.S. 211, 213.

[4] *Spokane County* v. *United States*, 279 U.S. 80; *New York* v. *Maclay*, 288 U.S. 290; *United States* v. *Waddill Co.*, 323 U.S. 353; *Illinois* v. *Campbell*, 329 U.S. 362; *United States* v. *Security Trust & Sav. Bank*, 340 U.S. 47; *United States* v. *New Britain*, 347 U.S. 81; *United States* v. *Acri*, 348 U.S. 211; *United States* v. *Liverpool & London Ins. Co.*, 348 U.S. 215; *United States* v. *Scovil*, 348 U.S. 218; *United States* v. *Colotta*, 350 U.S. 808, reversing *per curiam*, 224 Miss. 33, 79 So. 2d 474; *United States* v. *White Bear Brewing Co.*, 350 U.S. 1010, reversing *per curiam*, 227 F. 2d 359 (C.A. 7); *United States* v. *Vorreiter*, 355 U.S. 15, reversing *per curiam*, 134 Colo. 543, 307 P. 2d 475; *United States* v. *Ball Construction Co.*, 355 U.S. 587, reversing *per curiam*, 239 F. 2d 384 (C.A. 5); *United States* v. *Hulley*, 358 U.S. 66, reversing *per curiam*, 102 So. 2d 599 (Fla.); *United States* v. *Buffalo Savings Bank*, 371 U.S. 228; *United States* v. *Pioneer American Ins. Co.*, *supra*; cf. *Crest Finance Co.* v. *United States*, 368 U.S. 347; *United States* v. *Vermont*, 377 U.S. 351.

not relate back to the time of their creation to defeat federal liens perfected in the interval.[5] The underlying principle remains that stated by Chief Justice Marshall in *Rankin* v. *Scott*, 12 Wheat. 177, 179:

> * * * [A] prior lien gives a prior claim, which is entitled to prior satisfaction, out of the subject it binds, unless the lien be intrinsically defective, or be displaced by some act of the party holding it * * *.

Clearly, departure from these guidelines would leave the status of federal tax liens to be "determined by the diverse rules of the various States" and result in the "unequal application of the federal tax laws, depending upon variances in the terms and phraseology of different state and local * * * statutes and judicial rulings thereon." *United States* v. *Speers*, 382 U.S. 266, 270–271.[6]

B. *Respondent's Claim for Attorney's Fees was Indeterminate and Contingent when the Federal Tax Lien Arose*

The United States conceded at the outset that the claims for the principal and interest under the mortgages had priority over the tax lien (R. 4). Respondent asserts that its claim for an attorney's fee, in an amount fixed by Rule 4:55–7(c) of the State court rules, is likewise entitled to priority. The decision below sustaining that assertion is completely at variance with the principles outlined above and the applicable decisions of this Court.

[5] *United States* v. *Security Trust & Sav. Bank*, 340 U.S. 47, 50.

[6] In each of the last three fiscal years the United States has been named as a party (under 28 U.S.C. 2410) in more than 4,800 actions to foreclose or quiet title affecting property on which it held liens.

When the tax lien was recorded on March 21, 1962, the mortgagor-taxpayer was meeting his obligations under the mortgage. It was not until March 1963 that he first defaulted, and its was not until June 1963 that respondent commenced foreclosure proceedings. (R. 2–3). The judgment of the Chancery Division was entered in April 1964. It follows that when the tax lien arose, respondent had no claim for attorney's fees, let alone a perfected lien for one. That claim remained a purely speculative contingency at least until default and the commencement of foreclosure proceedings.[7] When the tax lien arose, respondent's potential claim under Rule 4:55–7(c) was not only indeterminate in amount but also appreciably further from perfection than "a *lis pendens* notice that a right to perfect a lien exists" (*United States* v. *Security Trust & Sav. Bank,* 340 U.S. 47, 50) and was barely a "*caveat* of a more perfect lien to come" (*New York* v. *Maclay,* 288 U.S. 290, 294).

The inchoate quality and subordinate standing of respondent's claim for attorney's fees was made abundantly clear in the Court's recent decision in *United States* v. *Pioneer American Ins. Co.,* 374 U.S. 84. *Pioneer* involved a mortgage which provided that a reasonable attorney's fee "shall be added to the principal sum * * * and shall be secured by this instrument" in the event of foreclosure (*id.* at 85 n. 1). The Court held that federal tax liens recorded after

[7] Under Rule 4:82–5, a mortgagee who commences and then abandons a foreclosure action loses his claim to attorney's fees even though junior encumbrancers proceed with the action.

recordation of the mortgage, after default and after the initiation of a foreclosure suit, but before entry of a judgment fixing the amount of the attorney's fees, were entitled to priority over the claim for such fees. The Court regarded the mortgagee's claim for attorney's fees as similar to a lien to secure future indebtedness and, therefore, as inchoate as a matter of federal law. The court below (R. 18–19) sought to distinguish *Pioneer* in part on the ground that there the obligation to pay a reasonable fee could not be finally fixed in amount until the date of the decree whereas, in the present case, Rule 4:55–7(c) provides a precise method for determining the fee. The distinction is without substance because the fixed percentages which the rule specifies for determining the allowance are applied to "all sums adjudged to be paid the plaintiff in such [foreclosure] action" (Rule 4:55–7(c)). At the time the tax lien here arose there was no conceivable way of determining what sums or that any sum might someday be "adjudged to be paid the plaintiff." Therefore, here, as in *Pioneer,* the amount of the allowance could not be finally fixed until the date of the decree.[8]

[8] "That R.R. 4:55–7(c) sets forth the precise percentage which is to be allowed is also immaterial in the case at bar, for, when the federal tax lien was filed, the mortgage was not even in default. The amount of counsel fee could not become certain until after the mortgage fell into default, was foreclosed and the amount due the mortgagee (and the fee) was adjudged by the court." *Camptown Savings & Loan Assn.* v. *United States*, 85 N.J. Super. 18, 20–21 (App. Div.).

Moreover, the provision in *Pioneer* obligating the mortgagor to pay an attorney's fee was judicially enforceable only by virtue of a State statute which validated such agreements as

The only material differences between the facts of the present case and those in *Pioneer* tend to show that this case follows a *fortiori*, for Pioneer's claim was held inchoate not withstanding the fact that,

> * * * By the time the federal liens subordinated by the Arkansas courts were placed of public record, default had occurred, the mortgagee had elected to declare the note due and payable, an attorney had been engaged and a suit to foreclose the mortgage had been filed. [374 U.S. at 90.]

In the present case, all those events were over the horizon when the tax lien was recorded. Here, as in *Pioneer,* "a lien for an attorney's fee which is uncertain in amount and yet to be incurred and paid * * * is inchoate and is subordinate to the intervening federal tax lien filed before the mortgagee's lien for the attorney's fee matures" (*id.* at 91).

The court below (R. 19) relied on *Security Mortgage Co.* v. *Powers,* 278 U.S. 149, for the proposition that the fixed percentage feature of the attorney's fee in this case made the *Pioneer* rule inapplicable. In doing so it disregarded this Court's observation in *Pioneer* (374 U.S. at 90 n.8) that the issue in *Security* was the status of an attorney's fee clause in bankruptcy proceedings "where the rigorous federal lien choateness test was not necessarily applicable." In *Secu-*

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contracts of indemnity and which limited such fee to 10 percent of the principal and interest due. 6A Ark. Stat. Anno. 68–910 (1957). Prior to the enactment of that statute, the Arkansas courts treated such agreements as unenforceable penalty provisions. See *Holloway* v. *Pocahontas Federal Savings & Loan Ass'n*, 230 Ark. 310, 312, 323 S.W. 2d 204, 206.

rity, which did not involve the priority of a federal tax lien at all, the Court held that the validity of the lien claimed by the mortgagee for attorney's fees "must be determined" by State law (278 U.S. at 153); that the enforcibility of the liability for attorney's fees against proceeds of the sale by the bankruptcy court raised "federal questions peculiar to the law of bankruptcy" (*id.* at 154); and that nothing in the Bankruptcy Act barred enforcement of the claim (*id.* at 155–160). Moreover, like *Pioneer,* but quite unlike the present case, in *Security* "the contingent obligation to pay attorney's fees was a part of the original transaction. The consideration for the lien was not the attorney's services, but the $90,000 advanced by the Mortgage Company; and this was a present consideration." (*Id.* at 156). In sum, Security was found to have no bearing in *Pioneer* and it clearly has none here.

II. THE STATE CANNOT DEFEAT THE PRIORITY OF A FEDERAL TAX LIEN BY CHARACTERIZING THE ALLOWANCE OF ATTORNEY'S FEES AS AN AWARD OF COSTS

A. The Standing of the Federal Tax Lien is not Determined by the State's Characterization of Competing Claims

The *Pioneer* decision made it clear that a State's determination to enforce a mortgagor's agreement to pay the mortgagee's attorney's fees in foreclosure proceedings does not give a claim for such fees priority over an intervening federal tax lien. The court below held, however, that a State may achieve the same result by characterizing the allowance as part of the

costs of the foreclosure. Yet nothing is more clearly settled than that a State may not alter the standing of a federal tax lien by its characterization of competing State-created liens.

In *United States* v. *Acri,* 348 U.S. 211, 213, the Court said:

> The relative priority of the lien of the United States for unpaid taxes is, as we said in *United States* v. *Waddill Co.,* 323 U.S. 353, 356, 357; *Illinois* v. *Campbell,* 329 U.S. 362, 371; *United States* v. *Security Trust Co.,* 340 U.S. 47, 49, always a federal question to be determined finally by the federal courts. The state's characterization of its liens, while good for all state purposes, does not necessarily bind this Court. *United States* v. *Waddill Co.,* 323 U.S. 353, at 357; *United States* v. *Gilbert Associates,* 345 U.S. 361.

The same principle was reiterated in *United States* v. *Buffalo Savings Bank,* 371 U.S. 228, where the Court held that a State could not give local real estate taxes priority over a federal tax lien by treating them as expenses of sale incurred in the foreclosure of a mortgage which was concededly senior to the federal lien—even though the burden of the State tax lien thereby fell upon the mortgagee. The Court there said (*id.* at 229) that "the state may not avoid the priority rules of the federal tax lien by the formalistic device of characterizing subsequently accruing local liens as expenses of sales." Here priority has been conferred on a unmistakably junior claim by an equally "formalistic device." A subordination of the federal lien which New York could not achieve under the rubric "expenses" and which Arkansas could not

achieve under the rubric "indemnity," New Jersey can not achieve under the rubric "costs."

To permit such a result would be to subject federal tax liens to the vagaries of purely arbitrary differences in the statutes, rules and decisions of the 50 states. Indeed, it would inevitably invite the States to overhaul the provisions for costs in their court rules.[9]

B. *The Government's Concession of Costs to Senior Lienors does not Embrace Attorney's Fees*

The fact that the United States has not contested the allowance of costs, not including counsel fees, to senior lienors can hardly constitute a concession with respect to the present claim. Because in the usual foreclosure proceeding, taxable costs are *de minimis*, fixed in amount, and generally constitute reimbursement for sums paid over to State officials, the United States has not challenged their award. But the decision not to do so has always been premised on the general rule in this country that attorney's fees are not taxable as costs.[10]

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[9] Statutes in only three states now provide explicitly for an allowance of attorneys' fees as costs in foreclosures. 44 Iowa Code Anno. § 625.22; 7 Rev. Codes of Mont. § 93–8613; 46 Okla. Stat. Anno. § 56. A few other States provide for a judicial award of counsel fees without designating them as costs where, as in *Pioneer*, the contract imposes the obligation to pay such fees. See, *e.g.*, VIII Conn. Gen. Stat. § 49–7; 4 Vt. Stat. Anno. § 4527.

[10] See *Sprague* v. *Ticonic Bank*, 307 U.S. 161, 165–166; *Vaughan* v. *Atkinson*, 369 U.S. 527, 530; Barron and Holtzoff, *Federal Practice and Procedure*, Section 1197; 6 Moore, *Federal Practice and Procedure*, ¶ 54.77[2]; McCormick, *Counsel Fees and other Expenses of Litigation as an Element of Damages*, 15 Minn. L. Rev. 619 (1931).

As the Court wrote long ago in *Sioux County* v. *National Surety Co.*, 276 U.S. 238, 243–244, attorney's fees are not "costs in the ordinary sense of the traditional, arbitrary and small fees of court officers, attorneys' docket fees and the like * * *." This very distinction is well recognized in New Jersey. In *United States Pipe & Foundry Co.* v. *United Steelworkers of America*, 37 N.J. 343, 355–356, 181 A. 2d 353, 359, the New Jersey Supreme Court noted that costs generally "comprise principally certain statutory allowances, amounts paid the clerk in fees, and various other specified disbursements of counsel including sheriff's fees, witness fees, deposition expenses and printing costs. * * * Counsel fees, although if allowable are included in the taxed costs, are an entirely different matter."

Even in the present case the award for attorney's fees was more than twice the amount of all the other taxed costs; a larger mortgage would have produced a much greater discrepancy. Moreover, New Jersey might appreciably increase the percentage allowances now provided by Rule 4:55–7(c). The United States has not consented, and is certainly not obliged to consent, to the subordination of prior federal liens to potentially substantial claims for attorney's fees.[11] Nor is there any reason why federal liens should be so subordinated. Contrary to the suggestion of the court below (R. 18), this is not a case in which the efforts of counsel created a fund. Counsel did not bring an asset into being but merely liquidated one. It is not

[11] Among the costs to which the United States did not object below is an allowance (under N.J. Rev. Stat. 22A:2–10)

suggested that the attorney's services in any way increased the total amount available for distribution. Cf. *United States* v. *Hubbell,* 323 F. 2d 197 (C.A. 5). Moreover, as this Court said in *Pioneer* (374 U.S. 84, 92 n. 13), "The attorney's services * * * were rendered for the benefit of the mortgagee to protect his interest in the property, and the United States, holding an adverse interest, received no such benefit from them that its interest is to be charged therefor." Although New Jersey elects to characterize an allowance of attorney's fees as costs, there is no more reason here than in *Pioneer* to permit the State characterization to defeat the priority of the federal tax lien.

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of $50 for drawing pleadings. That allowance derives from a "very old provision * * * enacted at a time when there was little or no service of notices by mail, and contemplated the drawing of them in manuscript, copying them by hand, and the actual service of them on the respondents personally." *Steelman* v. *Moore Bros. Glass Co.*, 93 N.J. Eq. 533, 536, 117 A. 516, 517. Whether or not that small, fixed allowance should have been objected to as constituting an additional attorney's fee, failure to object cannot be considered as a concession with respect to attorney's fees generally.

CONCLUSION

The judgment of the Supreme Court of New Jersey should be reversed and the case remanded with directions to award priority to the federal tax lien over the claim for an attorney's fee.

Respectfully submitted.

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MARCH 1966.

APPENDIX

Internal Revenue Code of 1954:

SEC. 6321. LIEN FOR TAXES

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

(26 U.S.C. 1958 ed., Sec. 6321.)

SEC. 6322. PERIOD OF LIEN

Unless another date in specifically fixed by law, the lien imposed by section 6321 shall arise at the time the assessment is made and shall continue until the liability for the amount so assessed is satisfied or becomes unenforceable by reason of lapse of time.

(26 U.S.C. 1958 ed., Sec. 6322.)

SEC. 6323. VALIDITY AGAINST MORTGAGEES, PLEDGEES, PURCHASERS, AND JUDGMENT CREDITORS

(a) *Invalidity of Lien Without Notice.*—Except as otherwise provided in subsection (c), the lien imposed by section 6321 shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the Secretary or his delegate—

(1) *Under state or territorial laws.*—In the office designated by the law of the State or Territory in which the property subject

to the lien is situated, whenever the State or Territory has by law designated an office within the State or Territory for the filing of such notice; or

(2) *With clerk of district court.*—In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law designated an office within the State or Territory for the filing of such notice; or

(3) *With clerk of district court for District of Columbia.*—In the office of the clerk of the United States District Court for the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

(b) *Form of Notice.*—If the notice filed pursuant to subsection (a)(1) is in such form as would be valid if filed with the clerk of the United States district court pursuant to subsection (a)(2), such notice shall be valid notwithstanding any law of the State or Territory regarding the form or content of a notice of lien.

(c) *Exception in Case of Securities.*—

(1) *Exception.*—Even though notice of a lien provided in section 6321 has been filed in the manner prescribed in subsection (a) of this section, the lien shall not be valid with respect to a security, as defined in paragraph (2) of this subsection, as against any mortgagee, pledgee, or purchaser of such security, for an adequate and full consideration in money or money's worth, if at the time of such mortgage, pledge, or purchase such mortgagee, pledgee, or purchaser is without notice or knowledge of the existence of such lien.

(2) *Definition of security.*—As used in this subsection, the term "security" means any bond, debenture, note, or certificate or other evidence of indebtedness, issued by any corporation (including one issued by a government or political subdivision thereof), with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing; negotiable instrument; or money.

(d) *Disclosure of Amount of Outstanding Lien.*—If a notice of lien has been filed under subsection (a), the Secretary or his delegate is authorized to provide by rules or regulations the extent to which, and the conditions under which, information as to the amount of the outstanding obligation secured by the lien may be disclosed.

(26 U.S.C. 1958 ed., Sec. 6323.)

Rules Governing the New Jersey Courts (1965 ed.):

4:55–7. *Counsel Fees*

No fee for legal services shall be allowed in the taxed costs or otherwise, except:

* * * * *

(c) In an action for the foreclosure of a mortgage. The allowance shall be calculated as follows: on all sums adjudged to be paid the plaintiff in such an action, amounting to $5,000 or less, at the rate of 3%, provided, however, that in any action a minimum fee of $75 shall be allowed; upon the excess over $5,000 and up to $10,000 at the rate of 1½%; and upon the excess over $10,000 at the rate of 1%.

* * * * *

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